In the High Court of Uttaranchal, at Nainital.

Writ Petition No. 902(S/S) of 2003

Gulbeer Singh S/o Prabhu Singh

R/o Jagatpura, Gali No.5

Rudrapur, District U.S. Nagar …….. Petitioner.

Versus

1- State of Uttaranchal
through Secretary Home Department,
Civil Secretariat, District Dehradun.

2- Inspector General of Police, P.A.C.
District Dehradun.

3- Deputy Inspector General, P.A.C.

4- Commandant, 46th Battalion, P.A.C.
Task Force, Rudrapur, Nainital.

5- Public Service Tribunal, Uttaranchal,
At Dehradun. … Respondents.

Sri Alok Singh, Senior Advocate, learned counsel for the petitioner.
Sri K.P. Upadhyaya, learned S.C. for the respondents.

Coram: Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal, J.

Dated: 17-04-2006

By way of this writ petition, following relief have been claimed:-

(i) To issue a writ, order or direction in the nature of certiorari quashing the orders dated 5-10-1994, 27-2-1995, 30-4-1996 and 29-5-2003 passed by respondent Nos. 2, 3, 4 and 5 contained in Annexure Nos. 1, 2, 3 and 4 to the writ petition.

(ii) To issue a writ, order or direction in the nature of mandamus commanding the respondents to reinstate the petitioner on the post of Constable with all consequential benefit.

2- Brief facts of the case are that the petitioner was working as a Constable in 46th Battalion, P.A.C. Task Force and was posted at Rudrapur. The petitioner in a drunken state late in the night on 25-5-1994, forcibly intruded into the house of Subedar Major Chamu Singh and mis-conducted by hurling filthy abuses. It was with great

difficulty and with the help of certain other members of the Force, the petitioner could be brought out of the house. The matter was reported in the same night with the Department Authorities and after the preliminary enquiry by the Company Commander, the petitioner was formally charged and in view of his unsatisfactory reply, he was put to a full dress enquiry.

3- The inquiry report was submitted to the Disciplinary Authority, holding the petitioner guilty of mis-conduct. On considering the totality of the matter, the impugned order of punishment was passed against the petitioner. The petitioner filed appeal against the impugned order of punishment (dismissal from service), but the same was dismissed. The petitioner also filed a revision, but it was also dismissed. The petitioner thereafter filed a claim petition before the Public Service Tribunal, Uttaranchal, at Dehradun and Public Service Tribunal also dismissed the claim petition vide judgment and order dated 29-5-2003.

4- Feeling aggrieved by the aforesaid impugned judgment passed by the Public Service Tribunal, the petitioner has filed this writ petition before this Court.

5- The counter affidavit has been filed by the respondents and it was pleaded that the petitioner intruded into the house of a Senior Officer and indulged himself in using filthy languages. It is also pleaded that the petitioner being a member of disciplined force, misconducted himself, hence his dismissal from the service was absolutely justified.

6- We have heard the learned counsel for the parties and perused the record.

7- It reveals from the record that the Inquiry Officer levelled the following charges against the petitioner:-

"दिनॉक 25–3–94 की रात्रि में समय लगभग 10 बजे शराब के नषे में सूबेदार सैन्य सहायक के सरकारी आवास पर जाकर उन्हें मॉ–बहिन की गन्दी–गन्दी गालियां दी व उनके आवास में घुस गये, उनके द्वारा समझाकर बाहर भेजने के बाद भी आवास के बाहर सूबेदार मेजर को नाम लेकर मॉ–बहिन की गन्दी गन्दी गालियॉ देते रहे जिससे एरिया गार्ड व अन्य कर्मचारियों द्वारा समझाया गया परन्तु नहीं माने। आपका इस प्रकार का

कृत्य अपने उच्च अधिकारियों के प्रति अभद्र अनुषासनहीनता, उदण्ड का द्योतक है। पुलिस जैसे अनुषासित बल में सेवा करने का अयोग्य होने का स्पष्ट प्रमाण है। जिससे आप दोषी है।"

8- On a careful consideration of the entire material on record, we are of the view that the charges levelled against the petitioner cannot constitute dismissal from the service and the punishment awarded to the petitioner appears to be quite disproportionate to the charges levelled against him. It is true that the petitioner is a member of the disciplined force, but merely on this assumption the disproportionate punishment cannot be awarded to the delinquent person. The respondents have not stated anywhere in the counter affidavit that the past service record of the petitioner had any clot. It is also not pleaded by the respondents that the petitioner is in the habit of repeating this type of incidents. It is also an admitted fact that the petitioner was not on duty when the incident in the night of 25-5-94 occurred. We are, therefore, of the considered view that punishment of dismissal from the service should be reduced and instead of petitioner's dismissal from the service, a censor entry should be awarded to him and his two permanent increments should be withheld from the cumulative effect. The petitioner also should not be paid any wages for the period he remained out of the job.

9- With the aforesaid observation, we set aside the impugned orders dated 5-10-1994, 27-2-1995, 30-4-1996 and 29-5-2003 passed by respondent Nos. 2, 3, 4 and 5, contained in Annexure Nos. 1, 2, 3 and 4 to the writ petition. We also issue a writ in the nature of mandamus commanding the respondents to reinstate the petitioner on the post of the Constable.

10- Accordingly the writ petition is partly allowed. There shall be no order as to cost.

(B.C. Kandpal, J.) **(P.C. Verma, J.)**

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